

SECOND DIVISION

[G.R. No. 205870, August 13, 2014]

**LEI SHERYLL FERNANDEZ, PETITIONER, VS. BOTICA CLAUDIO
REPRESENTED BY GUADALUPE JOSE, RESPONDENT.**

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated September 13, 2012 and the Resolution^[3] dated February 11, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 123633 which nullified and set aside (a) the Resolution^[4] dated March 15, 2010 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 01-22111-06-RI finding petitioner Lei Sheryll Fernandez (Fernandez) to have been illegally dismissed by respondent Guadalupe Jose (Jose), and (b) the Order^[5] dated August 17, 2010 of Labor Arbiter (LA) Napoleon V. Fernando granting the issuance of a writ of execution of the foregoing NLRC resolution.

The Facts

On November 14, 2002, Fernandez was hired as a trainee at Botica Claudio,^[6] a drugstore located at Tomas Claudio Street, Morong, Rizal,^[7] which is owned and operated by Jose. In January 2003, she was promoted as sales clerk/pharmacy aide, which position she held until the termination of her services on January 15, 2006.^[8] Due to her termination, Fernandez filed a complaint^[9] for illegal dismissal with prayer for the payment of her statutory benefits against Jose before the NLRC Regional Arbitration Branch (RAB) No. IV, docketed as NLRC Case No. RAB-IV-01-22111-06, alleging that: (a) during her employment, she was paid a salary of ₱ 180.00 per day,^[10] and worked from 8 o'clock in the morning until 8 o'clock in the evening, and sometimes, even up to 10 o'clock at night, but was never paid any overtime pay and/or holiday pay, and that her Social Security System (SSS) contributions were not duly remitted;^[11] (b) Jose merely fabricated the charges against her in order to justify her dismissal; and (c) she did not go on absence without official leave (AWOL).^[12]

Jose denied the foregoing allegations, and contended that Fernandez's dismissal was valid given that she went on AWOL; this, in addition to the various infractions she committed during her employment, particularly, her acts of (a) dispensing wrong medicines, (b) allowing some clients to buy medicines on credit without her employer's consent, and (c) dishonesty. Further, Jose claimed that all of her employees, including Fernandez, were paid their corresponding benefits, and that their SSS contributions were all duly remitted.^[13]

The LA Ruling

In a Decision^[14] dated December 11, 2007, the LA held that while just cause attended Fernandez's dismissal from work based on the finding that she went on AWOL, the same was nonetheless effected without procedural due process.^[15] Thus, the LA ordered Jose to pay Fernandez P11,700.00 as separation pay as well as P14,040.00 representing three (3) years of her unpaid 13th month pay, but denied her claims for overtime pay and moral/exemplary damages for lack of factual and legal bases.^[16]

Dissatisfied with the LA's ruling, Fernandez filed a Notice of Appeal^[17] with Memorandum of Appeal^[18] on February 8, 2008 before the NLRC. Copies of the same were purportedly sent by registered mail to one "Atty. Ramon E. Solis, Jr., Counsel for respondents, No. 5 Sto. Nino St., SFDM, 1100 Quezon City."^[19]

The Proceedings Before the NLRC

On March 15, 2010, the NLRC rendered a Resolution^[20] (NLRC Resolution) granting Fernandez's appeal, and thereby reversing the LA's ruling.

It found Fernandez to have been illegally dismissed by her employer, Jose, without a valid cause and observance of procedural due process.^[21] It observed that the pieces of evidence presented by Jose to substantiate Fernandez's purported infractions were merely fabricated, and that there was no indication that Fernandez was apprised of her supposed offenses before her dismissal.^[22] Accordingly, it ordered Jose to pay Fernandez the aggregate amount of P297,522.45, consisting of P254,831.85 as backwages, P42,120.00 as separation pay, and P570.60 as overtime pay.^[23]

On June 1, 2010, an Entry of Judgment^[24] was issued by the NLRC, declaring its Resolution to have become final and executory on May 18, 2010. Consequently, the LA issued an Order^[25] dated August 17, 2010 (LA Order) granting Fernandez's motion for execution.^[26]

Without disclosing the date when the foregoing resolution was received, Jose filed a motion for reconsideration^[27] dated January 20, 2011 before the NLRC, insisting that just causes attended Fernandez's dismissal, albeit the same was made without procedural due process.

Despite the fact that the NLRC had yet to act on the aforesaid motion for reconsideration, Jose filed a second motion for reconsideration^[28] dated February 2, 2011 before the same tribunal.^[29]

Notwithstanding the pendency of the aforesaid motions for reconsideration, Jose filed a petition for certiorari^[30] before the CA, claiming to have secured a copy of the NLRC Resolution and LA Order only upon personal verification on February 8, 2010^[31] and filed a motion for reconsideration therefrom on April 12, 2011,^[32]

referring to her second motion for reconsideration dated February 2, 2011.

The CA Ruling

In a Decision^[33] dated September 13, 2012, the CA granted Jose's petition for certiorari, holding that the NLRC gravely abused its discretion in taking cognizance of Fernandez's appeal despite the latter's failure to furnish Jose copies of her notice of appeal and appeal memorandum in violation of Article 223 of the Labor Code and the NLRC Rules of Procedure.^[34] Said pronouncement was based on the CA's finding that copies of Fernandez's notice of appeal and appeal memorandum were sent to one Atty. Ramon E. Solis, Jr., who was her (Fernandez's) own former counsel, and not Jose's. Thus, in view of Fernandez's failure to comply with the requirements for the perfection of her appeal, the CA held that Jose was deprived of her right to due process, and that Fernandez's appeal of the LA Decision had never been perfected, thereby rendering said decision final and executory,^[35] and the NLRC without any authority to entertain Fernandez's recourse.^[36] Accordingly, the CA declared the NLRC Resolution as well as the corresponding entry of judgment and the LA Order null and void,^[37] and reinstated the LA Decision.^[38]

Aggrieved, Fernandez sought reconsideration^[39] but the same was denied in a Resolution^[40] dated February 11, 2013, hence, the instant petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA erred in holding that the NLRC gravely abused its discretion in giving due course to Fernandez's appeal.

The Court's Ruling

The petition is meritorious.

At the outset, the Court notes that the CA gravely abused its discretion in giving due course to respondent's Rule 65 *certiorari* petition despite its finding that the latter still had a pending motion for reconsideration from the Decision dated March 15, 2010 before the NLRC.^[41] It is settled that the filing of a motion for reconsideration from the order, resolution or decision of the NLRC is an indispensable condition before an aggrieved party can avail of a petition for *certiorari*.^[42] This is to afford the NLRC an opportunity to rectify its perceived errors or mistakes, if any.^[43] Hence, the more prudent recourse for respondent should have been to move for the immediate resolution of its motion for reconsideration before the NLRC instead of filing a petition for *certiorari* before the CA. ^[44] Having failed to do so, her petition for *certiorari* was prematurely filed,^[45] and the CA should have dismissed the same.

On the merits, the Court finds that the CA erred in declaring that the failure of Fernandez to furnish Jose with copies of her notice of appeal and memorandum of appeal before the NLRC deprived the latter of her right to due process. ^[46]

While Article 223^[47] of the Labor Code and Section 3(a), Rule VI of the then New

Rules of Procedure of the NLRC^[48] require the party intending to appeal from the LA's ruling to furnish the other party a copy of his memorandum of appeal, the Court has held that the mere failure to serve the same upon the opposing party does not bar the NLRC from giving due course to an appeal.^[49] Such failure is only treated as a formal lapse, an excusable neglect, and, hence, not a jurisdictional defect warranting the dismissal of an appeal.^[50] Instead, the NLRC should require the appellant to provide the opposing party copies of the notice of appeal and memorandum of appeal.^[51]

In this case, however, the NLRC could not be expected to require compliance from Fernandez, the appellant, since it was not aware that the opposing party, Jose, was not notified of her appeal. Hence, it cannot be faulted in relying on Fernandez's representation that she had sent Jose, through her counsel, a copy of her memorandum of appeal by registered mail,^[52] as evidenced by Registry Receipt No. 006511.^[53]

More significantly, it is undisputed that Jose eventually participated in the appeal proceedings by filing not only one but two motions for reconsideration from the NLRC Resolution, thereby negating any supposed denial of due process on her part. As held in the case of *Angeles v. Fernandez*,^[54] the availing of the opportunity to seek reconsideration of the action or ruling complained of in labor cases amounts to due process.^[55] After all, the essence of due process is simply the opportunity to be heard or as applied in administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. What the law prohibits is absolute absence of the opportunity to be heard, thus, an aggrieved party cannot feign denial of due process where he had been afforded the opportunity to ventilate his side, as Jose was in this case.^[56]

Accordingly, the Court finds that the CA erred in ascribing grave abuse of discretion on the part of the NLRC in taking cognizance of Fernandez's appeal.

WHEREFORE, the petition is **GRANTED**. The Decision dated September 13, 2012 and the Resolution dated February 11, 2013 of the Court of Appeals in CA-G.R. SP No. 123633 are hereby **REVERSED** and SET ASIDE. The Decision dated March 15, 2010 of the National Labor Relations Commission and the Order dated August 17, 2010 of the Labor Arbiter are **REINSTATED**.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

^[1] *Rollo*, pp. 3-28.

^[2] *Id.* at 32-43. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela, concurring.

^[3] *Id.* at 46-47.